IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.W.P. No. 1139 of 2006

Date of decision:1.12.2006

United India Insurance Company **Petitioner**

VERSUS

MACT(Fast Track Court) **Respondent**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the petitioner : Mr.Ashwani Sharma, Advocate

For the Respondent :

Per Deepak Gupta, J. (Oral)

This petition is directed against the award of learned Motor Accident Claims Tribunal, Kangra at Dharamsala in MACP No. 115-K/II/05/2k, decided on 28.06.2006. A perusal of the award shows that both, the owner and driver of the tractor were ex parte and the only contesting respondent was Insurance Company. The Insurance Company did not even apply under Section 170 of the Motor Vehicles Act for permission to contest the case on merits, i.e. on quantum and negligence. Alongwith the writ petition certain photographs and an investigation report have been filed and on the basis of these photographs and investigation report it is contended that

the negligence was that of the driver of the case. These documents do not form part of the record of the trial court.

In a writ of certiorari against an order of a Judicial Officer, subordinate to High Court, the court has to decide the matter on the basis of the material before the tribunal and not on the basis of the material which has now been placed on record.

We have perused the award and we find that on the basis of the evidence led before the learned tribunal the tribunal has rightly came to the conclusion that the accident had occurred due to the negligence in parking the tractor. The amount awarded is just and reasonable and calls for no interference.

The writ petition is dismissed. No costs.

CMP No. 1787 of 2006

In view of the disposal of the main writ petition, this application also stands disposed of.

(Deepak Gupta), J.

December 1, 2006(K) (Surinder Singh), J.